

THE EFFECTIVE DATE OF THIS ORDINANCE IS FEBRUARY 20, 2007

ORDINANCE NO. 07-04-444

AN ORDINANCE TO AMEND AND REVISE CERTAIN PROVISIONS OF THE ADEQUATE PUBLIC FACILITIES ORDINANCE OF FREDERICK COUNTY, MARYLAND, CODIFIED IN CHAPTER 1-20 OF THE FREDERICK COUNTY CODE, 2004

RECITALS

The Board of County Commissioners of Frederick County, Maryland ("BOCC") held a duly advertised public hearing on proposed revisions and amendments to the Frederick County Adequate Public Facilities Ordinance ("APFO") on February 20, 2007, at which time the public had a reasonable opportunity to comment on the proposed revisions and amendments.

Pursuant to Section 1-20-23(A), after receiving public comments and having received recommendations from the Frederick County Planning Commission, the BOCC hereby deems the amendments to the APFO, as such amendments are set forth in this Ordinance, to be in the best interest of the citizens of Frederick County and consistent with the general intent and purposes of the APFO.

NOW, THEREFORE, be it enacted and ordained by the Board of County Commissioners for Frederick County, Maryland, that the APFO be amended as follows:

§ 1-20-7. EXEMPTIONS.

\* \* \*

**NOTE: Subsections (A) through (D) are unchanged.**

(E) Any project which qualifies as "housing for older persons" defined in § 1-20-5 hereof, and which meets the following criteria shall be exempt from the schools test under this chapter.

(1) The proposed project must comply with the minimum age restriction, as stated in the Fair Housing Act requirements for older persons, and thereby maintain an exemption from the prohibition against familial status discrimination, such that children will be excluded as residents.

(2) The zoning certificate, site plan and subdivision approvals shall limit usage of the property to ages specified by the Fair Housing Act in order to qualify as housing for older persons, as described in subsection (1) above.

**(3) THE PROPOSED PROJECT SHALL BE LOCATED IN AN AREA THAT WILL BE SERVED BY BOTH PUBLIC WATER AND SEWER**

Additions are CAPITALIZED and in **BOLD**; deletions are in [brackets] or ~~stricken through~~.

**WITHIN A DESIGNATED GROWTH AREA AND SHALL NOT BE LOCATED WITHIN AN AREA TO BE SERVED BY WELL OR SEPTIC.**

~~(3)~~ **(4)** The construction and development of the project must ~~[reflect the special needs of the senior citizen residents and]~~ include a full program of amenities and other activities for older persons. **AT A MINIMUM THE AMENITIES MUST INCLUDE:**

- (a) A TRAIL SYSTEM, WALKING PATHS, AND SIDEWALKS FOR PEDESTRIAN ACCESSIBILITY; AND**
- (b) A CLUBHOUSE/MULTI-PURPOSE BUILDING(S) OR EQUIVALENT SPACE SIZED AT 20 SQUARE FEET FOR EVERY DWELLING UNIT. A MINIMUM OF 1,500 SQ. FT. MUST BE PROVIDED. THE MAXIMUM SQUARE FOOTAGE REQUIRED SHALL BE 20,000 SQUARE FEET; AND**
- (c) ACTIVE RECREATIONAL OPEN SPACE (FOR THE PURPOSE OF PROVIDING AMENITIES, INCLUDING BUT NOT LIMITED TO, A SWIMMING POOL, TENNIS COURTS, CHIP AND PUTT COURSE, BOCCE COURTS, HORSESHOE PITS, AND/OR SIMILAR ACTIVE RECREATIONAL AMENITIES AT A RATE OF 1/3 ACRE PER 100 DWELLING UNITS. A MINIMUM OF 1 ACRE MUST BE PROVIDED. A SINGLE LARGE-SCALE AMENITY, SUCH AS A GOLF COURSE, MAY NOT BE PROPOSED AS THE SOLE MEANS TO SATISFY THIS REQUIREMENT. ONLY THE PHYSICAL STRUCTURE (I.E. FOOTPRINT) OF THE CLUBHOUSE/MULTI-PURPOSE BUILDING(S), NOT THE PARKING AREA(S), WILL BE CONSIDERED IN DETERMINING THE AREA OF ACTIVE RECREATIONAL OPEN SPACE. AND**
- (d) PASSIVE RECREATIONAL SPACE, INCLUDING BUT NOT LIMITED TO, PICNIC AREAS, GAZEBOS, POCKET PARKS AND/OR OTHER SIMILAR PASSIVE RECREATIONAL AMENITIES.**
- (e) AN APPROPRIATE PHASING SCHEDULE IN EACH PHASE OF DEVELOPMENT TO MEET THE NEEDS OF THE RESIDENTS.**

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**(5) IF, DUE TO UNUSUAL CIRCUMSTANCES OF SHAPE AND TOPOGRAPHY OR OTHER PHYSICAL FEATURES OR CONDITIONS OF THE DEVELOPMENT, OR BECAUSE OF THE NATURE OF ADJACENT DEVELOPMENTS, OR DUE TO THE EXISTENCE OF RESOURCES THAT WILL BE SHARED WITH ADJACENT DEVELOPMENTS, OR THE ARC INCLUDES THE ADAPTIVE REUSE OF AN EXISTING STRUCTURE OR STRUCTURES, EXTRAORDINARY HARDSHIP WILL RESULT FROM STRICT COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SUBSECTION (4)(a) THROUGH (4)(d) ABOVE, THE PLANNING COMMISSION MAY GRANT A MODIFICATION OF THESE REQUIREMENTS. THE APPLICANT MUST SUBMIT A JUSTIFICATION STATEMENT WITH ITS REQUEST FOR THE MODIFICATION, TOGETHER WITH EVIDENCE THAT THE DEVELOPMENT MEETS THE REQUIREMENTS STATED ABOVE FOR THE REQUESTED MODIFICATION. HOWEVER, THE PLANNING COMMISSION MAY NOT GRANT A MODIFICATION THAT WILL HAVE THE EFFECT OF SUBSTANTIALLY ALTERING OR NULLIFYING THE INTENT AND PURPOSE OF THIS SECTION. IN GRANTING MODIFICATIONS, THE PLANNING COMMISSION MAY REQUIRE SUCH CONDITIONS AS ARE DEEMED NECESSARY BY THE PLANNING COMMISSION IN ITS SOLE JUDGMENT.**

~~(4)~~ **(6)** As part of the site plan approval process, the County Planning Commission must review and approve the proposed restrictive covenants applicable to the project to ensure that the project is limited to housing for older persons and that appropriate enforcement mechanisms are in place to enforce the age restriction and also ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act.

~~(5)~~ **(7)** Prior to recordation of subdivision plats and issuance of the zoning certificate for the project, restrictive covenants must be recorded which comply with the Fair Housing Act, address senior citizen housing and the exclusion of secondary school aged or younger children as residents, and contain appropriate enforcement mechanisms. Any subsequent revisions or modifications of the covenants pertaining to age limits on occupancy shall be submitted to the Planning Commission for approval prior to recordation. Such revisions or modifications will require the re-approval of the site plan, zoning certificate, and subdivision plat(s), as necessary.

~~(6)~~ **(8)** Before any revision or modification to the project at any time in the future, whether the project is built out and occupied or not, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the schools adequacy requirements under this chapter.

~~(7)~~ **(9)** Any project approved under this section shall meet the requirements of the sections of this chapter requiring that roads, public water and sewerage facilities be adequate.

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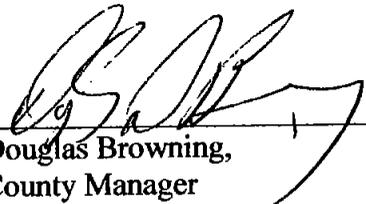
**(8) (10)** "Appropriate enforcement mechanisms" as used in this section shall include that the restrictive covenants for the project require the homeowners association, through a property management agent, to enforce the age restrictions and ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children will be excluded as residents. If more than 1 homeowners association is established for the project, then the homeowners association governing the housing for older persons project shall have the primary responsibility for enforcing the age restrictions and ensuring compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children shall be excluded as residents.

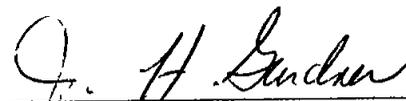
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on February 20, 2007.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 20th day of February, 2007.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
FREDERICK COUNTY, MARYLAND

  
\_\_\_\_\_  
Douglas Browning,  
County Manager

BY:  (SEAL)  
\_\_\_\_\_  
Jan H. Gardner, President

*KAM*  
*2/20/07*

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